

REMARKS

This Amendment is submitted in response to the non-final Office action dated March 16, 2009, setting forth a shortened three month statutory period for reply with a 2 month extension of time expiring on August 17, 2009 (August 16 falling on a Sunday). Claims 1-13 and 45-47 are cancelled herein, which cancellation should not be construed as acquiescence to the grounds of rejection and Applicant reserves the right to continue prosecuting the claims in a continuation application. Hence, claims 14, 16-33 and 41-42 are pending in the application, with claim 14 being an independent claim.

I. Rejections of claims under 35 U.S.C. § 101

Claims 1-14, 16-33, 41, 42, and 45-47 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-13, and 45 - 47 are cancelled herein. Independent claim 14 is amended herein to recite hardware components. As such, it is believed that all of the remaining claims recite proper subject matter and are in conformance with 35 U.S.C. § 101.

II. Rejection of claims under 35 U.S.C. § 103

Claims 1-14, 16-20, 22-33, 42 and 45-47 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2003/0018558 A1 to Heffner et al. (hereinafter "Heffner") in view of U.S. Patent No. 5,930,775 to McCauley et al. (hereinafter "McCauley"). Claim 21 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Heffner and McCauley as applied to claim 20 and further in view of U.S. Patent Publication No. 2001/0044773 A1 to Sellers et al. (hereinafter "Sellers").

A. The Combination of McCauley and Heffner does not disclose or suggest the liquidation time value decision tree of independent claim 1

The Office action has indicated that McCauley discloses the act of applying a liquidation value decision tree, and cites the Figs. 1-6 as well as the Abstract in support. The Examiner further indicates that the meaning of liquidation time value decision tree is as set forth in the specification at page 8, lines 20-30. We have amended to the claim to specifically recite the meaning of liquidation time value decision tree. Aspects of lines 20-30 are reflective of the meaning of a liquidation time value decision tree, and other aspects are merely referring to one particular embodiment. Hence, to clarify the matter, the claim has been amended. With the amendment in mind, we again submit that McCauley does not disclose a liquidation time value

decision tree. Instead, McCauley uses historical averages, which is believed to be common industry practice.

It is respectfully submitted that McCauley does not disclose or suggest provision of a liquidation time value decision tree in the manner claimed. Indeed, McCauley teaches against the notion, stating "to estimate the foreclosure fees and costs, the system examines a table in a loan experience database 352 for historical average foreclosure fees and costs for the state in which the subject property is located. The system uses these average fees and costs to compute the REO option." *See McCauley, col. 8, lines 22-26.* Hence, McCauley cannot use a liquidation time value decision tree that includes a plurality of time factors that account for the time associated with various events that may effect the liquidation time for the loan because McCauley uses historical average values. Stated differently, McCauley uses average values for a geographic region to calculate fees and costs, whereas claim 1 calculates liquidation timing for a particular loan based on time factors in a liquidation time value decision tree applicable to a particular loan. Hence, for at least these reasons, McCauley does not disclose obtaining an estimated liquidation time as set forth in claim 14, and claim 14 is thus patentable over the combination of Heffner and McCauley.

B. The combination of Heffner and McCauley does not disclose or suggest the loss mitigation action set forth in independent claim 1

Claim 1 requires "employing the at least one processor, providing a loss mitigation action for the loan pool based on an assessment of each of the at least one loans having the specified estimated liquidation time, the loss mitigation action comprising at least one of identifying an underperforming loan servicer associated with the at least one loan, identifying a delay in a foreclosure proceeding associated with the at least one loan, identifying a delay in a bankruptcy proceeding associated with the at least one loan, and identifying a delay associated with a litigation associated with the least one loan." It is respectfully submitted that neither Heffner nor McCauley disclose the above-recited elements.

To begin, it does not appear that the Office action addresses these specific limitations. The Office action, at paragraph 10, relies on recitation to claim 1. However, the rejection of claim 1 only deals with loss mitigation of making delinquent payments and refinancing, not the actions set out in claim 14. Namely, the Office action does not identify where either Heffner or McCauley discloses identifying an underperforming loan servicer associated with the at least one loan, identifying a delay in a foreclosure proceeding associated with the at least one loan, identifying a delay in a bankruptcy proceeding associated with the at least one loan, and

identifying a delay associated with a litigation associated with the least one loan. Moreover, it is respectfully submitted that neither McCauley nor Heffner disclose the recited loss mitigation actions. Thus, for this additional reason, claim 14 is patentable over the combination of Heffner and McCauley.

C. Other

Claim 14 also requires the limitations of “employing the at least one processor, associating the estimated liquidation time with the electronic record of the at least one loan” and “employing the at least one processor, applying at least one liquidation time filter to the electronic record of the loan pool to identify each at least one loan with a specified estimated liquidation time.” Because McCauley does not disclose a liquidation time value decision tree, and hence cannot disclose the element of “obtaining an estimated liquidation time ...,” the combination of Heffner and McCauley cannot disclose the above-recited elements of claim 14. Thus, for these additional reasons, claim 14 is patentable over the combination of Heffner and McCauley.

D. Dependent claims 16-33

Dependent claims 16-33 all describe specific details associated with the liquidation time value decision tree introduced in independent claim 1. The Office action relies on various passages of McCauley to disclose these various time factors. The referenced dependent claims are patentable over the combination of Heffner and McCauley as McCauley does not disclose any aspects of the liquidation time value decision tree as specified in the referenced dependent claims.

Firstly, McCauley simply does not disclose a liquidation time value decision tree for at least the reasons set forth above with respect to claim 1. Hence, McCauley cannot be sufficient to disclose the various elements of claim 16-33.

Secondly, none of the relied upon passages of McCauley to disclose the elements of claim 16-33 address the determination of time factors involved in liquidation timing in any way.

For example, the Office action relies on column 1, lines 25-30 to reject claims 16, 17, 31 and 32. However, the information at column 1, lines 25-30 simply has nothing to do with factors of a liquidation time value decision tree used in obtaining an estimated liquidation timing. Rather, the information at lines 25-30 describes the notion of lender payments involved in satisfying a loan obligation.

In another example, the Office action relies on column 2, lines 19-26 to reject claims 16, 17, 19, 20, 22, 23, 24, 25, 26, 28, 29, 31 and 32. The passage of McCauley set forth at lines

19-26 generally discusses certain aspects of loan modification. The passage does not discuss estimation of liquidation timing at any level, and certainly does not discuss the various particular liquidation time value decision tree details set forth in independent claim 1, nor the recited dependent claims.

The Office action relies on Fig. 6 and the Abstract as evidence to support a rejection of nearly all of dependent claims, with the exception of claims 31 and 32. However, McCauley explicitly states that the estimates related to foreclosure are based on historical average values obtained on a state by state basis. Hence, assuming *arguendo*, that the total days in process value involves liquidation timing to some extent, it is not based on a liquidation time value decision tree but rather on historical average values. Moreover, nothing in Fig. 6 explicitly identifies any of the liquidation time value decision tree factors set forth in the referenced dependent claims. The Abstract simply describes at a high level the notion of determining an optimal investment plan for distressed loans; the Abstract does not reference a liquidation time value decision tree nor any of the particulars of the dependent claims.

With respect to claims 19 and 20, the Office action relies on column 3, lines 1-31, column 5, lines 1-33, and column 7, lines 1-8 in rejecting the claims. These sections of McCauley do not describe any form of liquidation time value decision tree nor the particulars of claims 19 and 20. Column 3, lines 1-31 describe steps in selecting a business plan to cope with nonperforming loans. The steps do not seem to disclose any form of liquidation time value decision tree. Column 5, lines 1-33 simply do not discuss any aspects of a liquidation time value decision tree nor the particulars of time factors associated with bankruptcy or litigation. In fact, neither bankruptcy nor litigation are mentioned. Finally, col. 7, lines 1-8, does not provide any information related to liquidation timing, a liquidation time value decision tree nor the particulars of time factors associated with bankruptcy or litigation.

With respect to claims 22 and 23, the Office action also relies on col. 8, lines 39-47, and with respect to claim 24, relies generally on cols. 7-8. The information set out in columns 7-8 does not address estimation of liquidation timing involving a time value decision tree, nor the particulars of setting a time factor of the time value decision tree to account for litigation. Col. 8, lines 39-47 does mention attorney fees, but it is in the context of foreclosure and the costs if foreclosure is terminated due to a short payoff. This section does not address litigation timing and its impact on liquidation timing.

With respect to claims 25 and 26, the Office action also relies generally on columns 3-8. Claims 25 and 26 address time factors to particularly account for foreclosure of a particular loan.

While columns 3-8 certainly discuss notions of foreclosure proceedings in various areas, there is no discussion of liquidation timing and the use of liquidation time value decision tree with a time factor specifically accounting for foreclosure timing, let alone 12 months specifically. Indeed, as discussed elsewhere, at col. 8, line 22-25, it is specifically stated that the system uses historical average foreclosure fees and costs, which does not involve a liquidation time value decision tree.

With respect to claims 28 and 29, the Office action relies on column 7, lines 52-67 to disclose various notions of the establishment of a time factor to account for bankruptcy proceedings. This section of McCauley simply describes a database and the fact that it contains information related to expected costs associated with foreclosures based on historical averages, and other information. Nowhere does this section even mention bankruptcy proceedings, let alone the particulars of how bankruptcy timing effects liquidation timing and how such might be used in a liquidation time value decision tree.

With respect to claims 31 and 32, the Office action relies on column 10, line 33-column 11, line 5. This section of McCauley generally discusses various issues involved with loan modification in the overall context of the McCauley system. This section of McCauley does not disclose or suggest a litigation time value decision tree as claimed, or the specific marketing period aspects of claims 31 and 32.

For at least all of these reasons, neither Heffner nor McCauley are sufficient to disclose the features of the referenced dependent claims. Hence, besides the dependent claims being allowable for at least the same reasons as independent claim 1, these dependent claims are allowable for all the additional reasons set out above.

E. Dependent claim 21

The rejection of claim 21 correctly recognizes that McCauley does not describe any of the particular bankruptcy time factors set forth in the claim. The Office action indicates, however, that it would be obvious to add these features to McCauley because Sellers teaches that adding the features help to provide a system for automatically obtaining workout approval.

Firstly, McCauley does not describe a liquidation time value decision tree, and in some sense teaches against its use as the McCauley database only uses historical average fees. Secondly, even if one wanted to employ a liquidation time value decision tree with McCauley, such would not be possible without significant modification to include all of the information to employ a liquidation time value decision tree.

Thirdly, the Office action finds motivation in using bankruptcy time factors of claim 17 in combination with McCauley based on helping to provide loan workout approval as taught by Sellers. McCauley, however, is not concerned with loan workout approval. Hence, one of ordinary skill would not be motivated to modify McCauley to help provide loan workout approval as McCauley simply does not involve loan workout approval.

Finally, neither McCauley nor Sellers actually disclose the particulars of the bankruptcy time factors described and a liquidation time value decision tree. Hence, it is not a simple design choice to set the factors as claimed.

Hence, for at least these reasons, alone or collectively, claim 21 is patentable over the combination of Heffner, McCauley and Sellers.

III. Conclusion

For at least the reasons recited herein, it is believed that all claims are in form for allowance and issuance of a notice of allowance is respectfully requested. A petition for a two-month extension of time and Information Disclosure Statement and Statement of Relatedness accompany this Amendment and Response. Accordingly, please charge Deposit Account No. 04-1415 in the amount of \$490.00 for the two-month extension of time and \$180.00 for the Information Disclosure Statement fee. The Assignee believes no further fees or petitions are due with this filing. However, should any such fees or petitions be required, please consider this as authorization therefor and please charge such fees to Deposit Account number 04-1415.

If the Examiner should require any additional information or amendment, please contact the undersigned attorney.

Respectfully submitted,

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